

EXHIBIT B

Matthew G. Bagley (6820)
KESLER & RUST
36 South State Street, Suite 2000
Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 532-8000
Facsimile: (801) 531-7965
ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.

Randall T. Skaar (*Pro Hac Vice*)
Matthew T. Macari (*Pro Hac Vice*)
PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.
4800 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5740
Facsimile: (612) 349-9266
ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

Diversi-Plast Products, Inc.,)
a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
Battens Plus, Inc.,)
a California corporation,)
)
Defendant.)

Civil Action No: 2:04-CV-01005 PGC
Judge: Paul G. Cassell

**PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.'S ANSWERS
TO DEFENDANT'S FIRST SET OF INTERROGATORIES (UNVERIFIED)
(NOS. 1 TO 30)**

TO: Defendant above-named and its counsel, Daniel Ballard and Michael S. Wilcox, McDonough, Holland & Allen, P.C., 555 Capitol Mall, Suite 950, Sacramento, California 95814-4504:

GENERAL OBJECTIONS AND COMMENTS

1. Diversi-Plast objects to each Interrogatory to the extent it seeks information subject to the attorney-client privilege, work product doctrine, or other privileges and rules of law on the grounds that such matter is exempt from discovery.

2. Diversi-Plast objects to any and all instructions or definitions provided by Battens Plus which seeks to impose requirements beyond those contained in the Federal Rules of Civil Procedure.

3. Diversi-Plast objects that a number of Battens Plus' Interrogatories are compound and burdensome, and contain multiple discrete subparts and wholly separate inquiries. Diversi-Plast will respond in accordance with its understanding of the scope and subject matter of the Interrogatories.

4. Diversi-Plast reserves the right to serve supplemental responses to these Requests for Production pursuant to Fed. R. Civ. P. 26(e)(2).

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify each claim of the patent in suit that you allege is infringed by Battens Plus.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that

the BattenUp product, and each known model or version thereof, literally infringes at least claim 2 of the patent in suit.

INTERROGATORY NO. 2:

For each claim of the patent in suit you allege is infringed by Battens Plus, identify each Battens Plus product, including without limitation each former product, that you allege infringes that claim.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that the BattenUp product, and each known model or version thereof, literally infringes at least claim 2 of the patent in suit.

INTERROGATORY NO. 3:

State the meaning of the term "batten" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 4:

State the meaning of the term "spacer" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or

analyses that you contend support your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 5:

State the meaning of the term "overlayment" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 6:

State the meaning of the term "ply" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 7:

State the meaning of the term "first plies" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 8:

State the meaning of the term "cross plies" as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further

objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 9:

State the meaning of the word "cooperating" as it is used in the phrase "the first and second plies cooperating to define a multiplicity of passages" in claim one of the '193 Patent including an explanation in complete detail as that term is used in the claims of the patent in suit including an explanation in complete detail of the entire legal and factual basis for your construction, including an identification (by column, line, or page number, or title or document production number) of all relevant portions of all intrinsic evidence, extrinsic evidence, and/or analyses that you contend supports your construction; and including an identification of the name, address, and telephone number of those persons who are most knowledgeable about each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, premature, and seeks opinions on the pure legal issue of claim construction.

INTERROGATORY NO. 10:

Separately, for each Battens Plus product that you allege infringes a claim of the patent in suit, state the theory for your claim of infringement including, without limitation, an explanation of whether such infringement is literal or under the doctrine of equivalents; an explanation or [sic] how 35 U.S.C. § 112, ¶ 6 is satisfied if applicable (including, without limitation, identification of corresponding structures in the patent specification and the purportedly infringing Battens Plus products, and an explanation of how they are the same or equivalent); an explanation of whether such infringement is direct (i.e., under 35 U.S.C. § 271(a)) or indirect (i.e., under 35 U.S.C. § 271(b) and (c)); and if indirect, an identification of each third party whose alleged infringement is direct.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is burdensome and premature. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that the BattenUp

product, and each known model or version thereof, literally infringes at least claim 2 of the patent in suit, and that claim 2 does not include language presumptively falling under 35 U.S.C. 112, Par. 6.

INTERROGATORY NO. 11:

For each claim of the patent in suit you allege is infringed by Battens Plus provide infringement claim charts that include a detailed statement of how each claim limitation is satisfied by each of the Battens Plus products that you allege infringes the claim, including in each chart the entire legal and factual basis for your infringement contention and the identification of all documents (with reference to relevant page and line or paragraph number) or other evidence that supports your contention.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome and premature, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that the BattenUp product, and each known model or version thereof, literally infringes at least claim 2 of the patent in suit.

INTERROGATORY NO. 12:

Separately for each claim of the patent in suit, provide the date and state in complete detail the facts and circumstances of how you first became aware that Battens Plus was allegedly liable for infringement, describe how you obtained such awareness, describe any action taken in response to such awareness, identify the entire legal and factual basis (including relevant portions of documents, identified by document production number) for each statement and/or fact set forth in response to this interrogatory, identify the name, address, and telephone number of those persons who are most knowledgeable about such awareness.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections,

Diversi-Plast presently answers that Diversi-Plast became aware of Battens Plus' product or proposed product in 2002, on or around the time of the 2002 ICBO meeting directed to new acceptance criteria for a plastic batten.

INTERROGATORY NO. 13:

Separately with respect to each claim of the patent in suit, identify the earliest date of conception, and all documents which, and persons who, can corroborate each such conception date.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 14:

Separately with respect to each claim of the patent in suit, identify the earliest date of actual reduction to practice, and all documents which, and persons who, can corroborate each such actual reduction to practice.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 15:

Separately with respect to each claim of the patent in suit, state the date, after conception, when active exercise of reasonable diligence toward reducing the subject matter of the claim to practice began; state the circumstances allegedly supporting any diligence from conception to reduction to practice; and identify the persons with knowledge of such diligence and all documents related thereto.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "when active exercise of reasonable diligence toward reducing the subject matter of the claim to practice began." Diversi-Plast further objects that this Interrogatory is compound and overly burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that the claimed invention of the '193 patent was reduced to practice constructively at least by December 17, 1998.

INTERROGATORY NO. 16:

For each asserted claim of the patent in suit, identify the product or thing that constituted the first embodiment of each claimed invention, and identify when it was first offered for sale, sold, and publicly used.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "the first embodiment of each claimed invention." Diversi-Plast further objects that this Interrogatory seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 17:

For each asserted claim of the patent in suit, identify the marketing name or product number of every product you or your licensee(s) has ever sold that embodies, incorporates, or integrates the invention contemplated by that claim.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "embodies, incorporates, or integrates the invention contemplated by that claim." Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that its Flow-Thru commercial product is marked with and covered by the '193 Patent.

INTERROGATORY NO. 18:

If you contend that you mark the products that embody the claimed invention of the patent in suit with a U.S. patent number, state the dates on which you first marked each such product, the manner in which each such product was marked and identify any document or other evidence that supports this contention.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "embodies, incorporates, or integrates the invention contemplated by that claim." Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that its Flow-Thru commercial product is marked with and covered by the '193 Patent.

INTERROGATORY NO. 19:

Identify all prior art, or potential prior art, known to plaintiff, and describe the circumstances under which the plaintiffs first became aware of that prior art, including, but not limited to, the identity of the person/s [sic] who identified or provided each such item of prior art to plaintiff, and all communications related to plaintiffs becoming aware of such prior art.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "prior art, or potential prior art." Diversi-Plast further objects that this Interrogatory is burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 20:

Identify all prior art, or potential prior art, known to the inventors of the patent in suit prior to the filing of the applications corresponding to the patent in suit, whether or not cited during the prosecution of that application, and, for each such item of prior art, describe the circumstances under which the inventors became aware of it, including, but not limited to, the identity of the person/s [sic] who identified or provided such items to the inventors, and all communications related to the inventors becoming aware of such prior art.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine, and that it is vague and ambiguous as to the meaning of "prior art, or potential prior art." Diversi-Plast further objects that this Interrogatory is burdensome, and seeks opinions on pure legal issues. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 21:

Explain in complete detail the level of ordinary skill in the art that you contend is applicable for purposes of claim construction for each claim of the patent in suit, including an identification of the entire legal and factual basis (including relevant portions of documents, identified by document production number) for each statement and/or fact set forth in response to this interrogatory.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and burdensome and premature, and seeks opinions on pure legal issues.

INTERROGATORY NO. 22:

If you contend that there are secondary considerations of non-obviousness, or other facts, that should be considered in determining whether any claims of the patent in suit are invalid, explain in complete detail every aspect of, and basis for, you [sic] contention, explain all facts and legal arguments upon which you intend to rely in support of your contention, identify documents and evidence therein sufficient to support your contention, and identify those persons who are most knowledgeable about your contention.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and burdensome and premature, and seeks opinions on pure legal issues.

INTERROGATORY NO. 23:

Explain in detail why you believe Battens Plus has willfully and deliberately infringed, contributorily infringed, and/or induced others to infringe each asserted claim of the patent in suit.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is premature. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that Battens Plus continued, and still continues, to sell the infringing BattenUp product after receiving notice from Diversi-Plast's counsel of such infringement.

INTERROGATORY NO. 24:

Identify all damages you seek in connection with the alleged infringement of the patent in suit, including, but not limited to, any claim for damages based on lost profits, a reasonable royalty, prejudgment interest, enhanced damages, trebled damages, and/or attorney's fees, and the amount of, and details relating to, each claimed type of damages.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and burdensome and premature, and inquires into information in the possession and under the control of Battens Plus. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

INTERROGATORY NO. 25:

Identify in complete detail each instance of which you are aware in which anyone has made any allegations regarding the infringement, validity, and/or enforceability of the patent in suit (including during any licensing negotiations), including a complete identification of the circumstances, date, location, identity of any alleged infringer, identity of the party making the allegation, parties involved, current status, the resolution of the allegation, and the substance of the allegation.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and burdensome. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that Battens Plus was notified of its infringement of the '193 Patent as early as November, 2003, and Battens Plus challenged the validity of the '193 Patent through the filing of a reexamination request before the United States Patent and Trademark Office in March 2005.

INTERROGATORY NO. 26:

Describe in complete detail the identity and substance or [sic] each evaluation, opinion (including opinions of counsel), search, investigation, or other analysis, whether oral or in writing, of which you are aware, that relates to the validity, enforceability, scope, infringement, patentability, novelty, and/or state-of-the-art of the patent in suit, related applications, and/or related patents, including an identification, separately for each such analysis, of all documents and things embodying, reflecting, used in, relating to, revealed by, or identified in the analysis, and an identification of the name, address, telephone number, and role of those persons and/or entities who were involved in authorizing, reviewing the results of, or conducting such analysis and/or who are most knowledgeable about such analysis.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Diversi-Plast further objects that this Interrogatory is compound and burdensome. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that Battens Plus challenged the validity of the '193 Patent through the filing of a reexamination request before the United States Patent and Trademark Office in March, 2005, with its apparent opinions on the scope and patentability of the claims provided therein.

INTERROGATORY NO. 27:

Identify any and all press releases, media releases, announcements (including, but not limited to any internal announcement) in any form relating to the filing, prosecution, infringement, issue and/or reissue of the patent in suit.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that it is not aware of any such press releases or announcements.

INTERROGATORY NO. 28:

Identify all third parties to whom you asserted that Battens Plus was, or was likely, infringing the patent in suit.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that it is only aware of infringement of the '193 Patent by Battens Plus.

INTERROGATORY NO. 29:

Identify in complete detail each communication between you and all third parties that relate to Battens Plus' allegedly infringing product(s), including a complete identification of the circumstances, date, location, and identity of the third party.

ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast presently answers that it is not aware of such details.

INTERROGATORY NO. 30:

Describe in detail the basis for your declaration in your Reissue Application that the '193 patent is "wholly or partly inoperative or invalid."


ANSWER:

Diversi-Plast objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client privilege and/or the work product doctrine. Subject to and without waiving these objections, or the General Objections, Diversi-Plast will produce and direct Battens Plus to documents in accordance with Rule 33(d).

**PATTERSON, THUENTE,
SKAAR & CHRISTENSEN, P.A.**

Date: October 28, 2005

By:



Randall T. Skaar (*Pro Hac Vice*)
Matthew T. Macari (*Pro Hac Vice*)
4800 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5740
Facsimile: (612) 349-9266

Matthew G. Bagley (#6820)
KESLER & RUST
36 South State Street, Suite 2000
Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 532-8000
Facsimile: (801) 531-7965

**ATTORNEYS FOR PLAINTIFF
DIVERSI-PLAST PRODUCTS, INC.**

VERIFICATION

State of Minnesota)
)
 County of Hennepin)

Gary G. Urbanski, Sales and Marketing Manager of Diversi-Plast Products, Inc. ("Diversi-Plast"), being first duly sworn upon oath, states that he has reviewed Diversi-Plast's Answers to Defendant's First and Second Sets of Interrogatories (Interrogatory Nos. 1-57) and all supplementations thereto, and that he does not have personal knowledge as to the truth or accuracy of all such Answers, but that he is informed and believes that said Answers are true and correct; and that he has relied on his counsel for the form of these Answers and for the application of law to fact.



DIVERSI-PLAST PRODUCTS, INC.

[Signature]
 Gary G. Urbanski
 Sales and Marketing Manager

Subscribed and sworn to before me
 this 27th day of February, 2006.

[Signature]
 Notary Public